

Volume 1, Pages 1-92

Exhibits: 1-7

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

\* \* \* \* \*

DAVID SETH WORMAN, et al.,

Plaintiffs,

vs.

CHARLES D. BAKER, in his official  
capacity as Governor of the  
Commonwealth of Massachusetts, et al.,

Defendants

\* \* \* \* \*

Rule 30(b)(6) DEPOSITION OF EXECUTIVE OFFICE OF  
PUBLIC SAFETY AND SECURITY (by David Marc Solet)

Wednesday, August 30, 2017, 9:31 a.m.

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<p>3</p> <p>1 Office of the Attorney General</p> <p>2 William W. Porter, Esq.</p> <p>3 Gary Klein, Esq.</p> <p>4 Assistant Attorneys General</p> <p>5 One Ashburton Place</p> <p>6 Boston, Massachusetts 02108</p> <p>7 617.963.2959</p> <p>8 bill.porter@state.ma.us</p> <p>9 gary.klein@state.ma.us</p> <p>10 for Defendants</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p>5</p> <p>1 August 30, 2017 9:31 a.m.</p> <p>2 P R O C E E D I N G S</p> <p>3 (Exhibit 1 marked for identification.)</p> <p>4 (Exhibit 2 marked for identification.)</p> <p>5 (Exhibit 3 marked for identification.)</p> <p>6 DAVID MARC SOLET,</p> <p>7 being first duly sworn or affirmed to testify to the</p> <p>8 truth, the whole truth, and nothing but the truth,</p> <p>9 was examined and testified as follows:</p> <p>10 MR. NARDONE: For the record, my name is</p> <p>11 Marc Nardone, counsel for the plaintiffs in the case</p> <p>12 styled David Seth Worman et al. versus Charles D.</p> <p>13 Baker, in his official capacity as Governor of the</p> <p>14 Commonwealth of Massachusetts, et al.</p> <p>15 EXAMINATION</p> <p>16 BY MR. NARDONE:</p> <p>17 Q. Could you please state your full name and</p> <p>18 job title for the record, please.</p> <p>19 A. My name is David Marc Solet, and Marc is</p> <p>20 spelled with a c. I'm the chief legal counsel at</p> <p>21 the Executive Office of Public Safety and Security</p> <p>22 for the Commonwealth of Massachusetts.</p> <p>23 Q. And have you ever had your deposition taken</p> <p>24 before?</p>

<p style="text-align: right;">6</p> <p>1 A. I have not.</p> <p>2 Q. We'll go over a few ground rules here.</p> <p>3 Please try to keep your voice up so the court</p> <p>4 reporter can hear everything. Please wait until</p> <p>5 I've finished asking all the question before you</p> <p>6 start to respond. He can only take one of us down</p> <p>7 at a time. If any of the questions that I ask are</p> <p>8 unclear or anything like that, please just ask me to</p> <p>9 restate it or rephrase it, tell me you don't</p> <p>10 understand, and we'll try to work through that. If</p> <p>11 you want to take a break at any time, just let me</p> <p>12 know and we can stop. The only issue is, if there's</p> <p>13 a question pending, I'll ask that you let me finish</p> <p>14 it before we take a break. Does that all make</p> <p>15 sense?</p> <p>16 A. Yes.</p> <p>17 MR. PORTER: I'd like to just note the</p> <p>18 stipulation I hope we can keep from yesterday, which</p> <p>19 is that all objections except as to the form of the</p> <p>20 question and all motions to strike are reserved</p> <p>21 until the time of trial.</p> <p>22 MR. NARDONE: That's fine.</p> <p>23 Q. How long have you been in your current</p> <p>24 position?</p>	<p style="text-align: right;">8</p> <p>1 feeding devices under that same provision, but I</p> <p>2 don't believe I ever charged anybody with the</p> <p>3 assault weapon. I used typically a different</p> <p>4 provision of law to do that.</p> <p>5 Q. And what provision of law would that be?</p> <p>6 A. It would depend on the fact scenario, but</p> <p>7 sometimes I would charge under Chapter 265, Section</p> <p>8 18B, I believe is the use of a large-capacity weapon</p> <p>9 in the commission of a felony. If, for instance, it</p> <p>10 was an ongoing drug operation and the weapon was</p> <p>11 recovered, I might use that. Or if the person had</p> <p>12 qualifying prior convictions, I would use Chapter</p> <p>13 269, Section 10, capital G, which is sometimes</p> <p>14 referred to as the Armed Career Criminal Act,</p> <p>15 because that would carry a stronger penalty under</p> <p>16 those circumstances.</p> <p>17 Q. So it's safe to say that if an assault</p> <p>18 weapon were used in a crime, it's not necessarily</p> <p>19 the case that a prosecution would result under</p> <p>20 Chapter 131M?</p> <p>21 A. That's right.</p> <p>22 Q. If you could take a look at that document I</p> <p>23 handed you, marked as Exhibit 1, and just briefly</p> <p>24 flip through it and let me know if you've seen that</p>
<p style="text-align: right;">7</p> <p>1 A. I came over to the Executive Office of</p> <p>2 Public Safety in April of 2015.</p> <p>3 Q. And what did you do before that?</p> <p>4 A. I was a prosecutor in the Middlesex</p> <p>5 District Attorney's office since 2001.</p> <p>6 Q. And what kind of crimes did you prosecute</p> <p>7 generally?</p> <p>8 A. At the time that I left the office I was</p> <p>9 the general counsel of the Middlesex DA's office,</p> <p>10 and I was handling a mixture of serious violent</p> <p>11 crimes, like homicides, and organized crime</p> <p>12 offenses, particularly wiretap investigations.</p> <p>13 Q. And in your role as a prosecutor, did you</p> <p>14 ever prosecute anyone for a violation of the</p> <p>15 Massachusetts assault weapons ban?</p> <p>16 A. I don't believe that I ever used Chapter</p> <p>17 140, Section 131M. I did prosecute multiple people</p> <p>18 for possessing weapons that would be classified as</p> <p>19 assault weapons under that statute.</p> <p>20 Q. I'm going to hand you what's been marked as</p> <p>21 Exhibit 1. If you could take a look at that.</p> <p>22 A. Can I just clarify? So you asked about</p> <p>23 weapons, and I said not under that statute. I'm</p> <p>24 certain that I prosecuted people for large-capacity</p>	<p style="text-align: right;">9</p> <p>1 before.</p> <p>2 A. I have, yes.</p> <p>3 Q. And if you could turn to, near the end</p> <p>4 there is a list of topics with a header called</p> <p>5 Attachment A. Have you seen that list?</p> <p>6 A. I have.</p> <p>7 Q. And it's my understanding, and please</p> <p>8 correct me if I'm wrong, that there are some of</p> <p>9 these topics that you're going to be testifying</p> <p>10 about but not all of them today?</p> <p>11 A. That's correct.</p> <p>12 Q. And which topics are you going to be</p> <p>13 testifying about?</p> <p>14 A. I think the intention is that I testify to</p> <p>15 1 through 8.</p> <p>16 Q. Okay. And you're prepared to testify to</p> <p>17 all of those; correct?</p> <p>18 A. And I think probably also, to the extent</p> <p>19 that somebody is testifying, I think that Michaela</p> <p>20 Dunne is probably going to testify to 9, 10, and</p> <p>21 11 -- but as to 13 and 14, if it was one of us.</p> <p>22 MR. PORTER: If I may: I think</p> <p>23 Michaela's covering 9 through 12; right? Does that</p> <p>24 look right?</p>

<p style="text-align: right;">70</p> <p>1 because -- well, the witness can answer if he has  2 information based on public information. But to the  3 extent the witness is concerned right now that if he  4 answers he may be disclosing information he has  5 received in the context of an attorney-client  6 communication or in the context of a law enforcement  7 investigation, I would instruct him not to answer  8 that.</p> <p>9 A. Then I'm going to decline to answer that  10 question.</p> <p>11 Q. Is EOPSS continuing to provide firearms  12 records to the Attorney General in response to  13 requests for -- under the review that was part of  14 the notice of enforcement?</p> <p>15 MR. PORTER: This question I'll permit  16 an answer to if the witness knows, but no more  17 detail than this, because it will involve --</p> <p>18 MR. NARDONE: I haven't asked any other  19 questions.</p> <p>20 MR. PORTER: I understand, but it will  21 involve privileged material if it gets into more  22 detail. If the witness knows.</p> <p>23 A. The answer is yes.</p> <p>24 Q. In the Attorney General's remarks related</p>	<p style="text-align: right;">72</p> <p>1 cause any undue delay.</p> <p>2 MR. NARDONE: It's about 11:00 o'clock,  3 so I imagine a lunch break will probably be right  4 around where we're talking about.</p> <p>5 MR. KLEIN: Are you confident enough  6 that I can call her and let her know --</p> <p>7 MR. NARDONE: I'm not prepared to give  8 an exact time right now.</p> <p>9 (Discussion off the record.)</p> <p>10 Q. Is anyone in EOPSS responsible for  11 determining whether a firearm is a copy or  12 duplicate?</p> <p>13 A. There's nobody who has primary  14 responsibility. There's no single person who that's  15 their primary responsibility. State Troopers who  16 are charged with enforcing the laws of  17 Massachusetts, parole officers who have a similar  18 role, if they were to encounter a weapon, that would  19 be part of their responsibility in terms of  20 determining whether it was evidence of a crime or  21 not evidence of a crime.</p> <p>22 Q. So the law enforcement officers and  23 probation officers under the umbrella of EOPSS would  24 have that --</p>
<p style="text-align: right;">71</p> <p>1 to the notice of enforcement, she stated that tens  2 of thousands of copies or duplicates had been sold  3 in 2015. Do you know if this number came from EOPSS  4 records?</p> <p>5 A. I expect that it would have, but I don't  6 know. I wasn't part of the team that assembled  7 statistics for the Attorney General.</p> <p>8 Q. Did anyone in your office work with the  9 Attorney General in the promulgation of the notice  10 of enforcement?</p> <p>11 A. In the notice of the promulgation? Meaning  12 the drafting of the documents that you showed me,  13 what's been marked as Exhibit 6?</p> <p>14 Q. That's correct.</p> <p>15 A. No.</p> <p>16 MR. PORTER: Sorry, Marc. I have no  17 idea where you're at in your outline. We were going  18 to call Ms. Dunne and give her 20 minutes' notice.  19 Just let me know when you get there. We can text or  20 call her, and then she'll drive over. She's about  21 15 minutes away.</p> <p>22 MR. NARDONE: Okay. I'll be very  23 cognizant of that.</p> <p>24 MR. PORTER: I'm just saying that to not</p>	<p style="text-align: right;">73</p> <p>1 A. Not probation officers. Parole officers  2 are EOPSS personnel.</p> <p>3 Q. So the law enforcement officers and parole  4 officers under EOPSS would have that responsibility  5 in the field.</p> <p>6 A. That's right.</p> <p>7 Q. If you know, does EOPSS have any written  8 protocols as to how to determine whether a weapon is  9 a copy or duplicate?</p> <p>10 A. No. I think that the personnel would be  11 relying on the Attorney General's guidance, which is  12 the document that you've shown.</p> <p>13 Q. So if you could turn to Page 4 of that  14 document, which is Exhibit 6. It states that, in  15 the second paragraph below the number 2, it states,  16 "The fact that a weapon is or has been marketed by  17 the manufacturer on the basis that it is the same as  18 or substantially similar to one or more enumerated  19 weapons will be relevant to identifying whether the  20 weapon is a copy or duplicate." Do you see that  21 statement?</p> <p>22 A. I do.</p> <p>23 Q. What is EOPSS's position on what the word  24 "relevant" means there?</p>